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**MAILED**

**MAY 10 2011**

**OFFICE OF PETITIONS**

|                             |   |                              |
|-----------------------------|---|------------------------------|
| In re Application of        | : |                              |
| John H. Stevens             | : |                              |
| Application No. 10/047,581  | : | DECISION DISMISSING PETITION |
| Filed: October 23, 2001     | : | UNDER 37 CFR 1.78(a)(3)      |
| Attorney Docket No. HRT-287 | : |                              |

This is a decision on the renewed communication filed on April 21, 2011, which is being treated as a petition under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional applications filed in the instant petition.

The petition is again **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The instant petition fails to comply with item (1) above.

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note

that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office<sup>1</sup>.

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an ADS or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matter is required

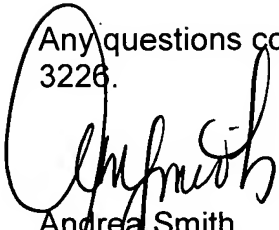
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3226.



Andrea Smith  
Petitions Examiner  
Office of Petitions

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<sup>1</sup> The copy of the priority claim filed with the present petition on April 21, 2011, contains the incorrect filing date of Application No. 08/615,481. Also, it is noted that the correct filing date appears in the present petition; however, no new amendment or Application Data Sheet (ADS) has been submitted with the correct filing date. Therefore, the present petition cannot be granted at this time.